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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/831,489 | 08/10/2001 | Antony Keith Van Dyk | TJK/174 | 5569 |
| 27717 | 7590 | 07/12/2005 | EXAMINER | |
| SEYFARTH SHAW 55 EAST MONROE STREET SUITE 4200 CHICAGO, IL 60603-5803 | | | NORDMEYER, PATRICIA L | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1772 | |

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/831,489

Applicant(s)

VAN DYK ET AL.

Examiner

Patricia L. Nordmeyer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 52-62, 64-77, 79-87, 106-108 and 110-120 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 52-62, 64-77, 79-87, 106-108 and 110-120 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 23, 2005 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claims 52, 65 and 106 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "and substantially reduces the amount of skinning of the formulation" in claims 52, 65 and 106 is unclear, which render the claims vague and indefinite. The term "substantially" in claims 52, 65 and 106 is a relative term, which render the claims indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard

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for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Correction/clarification is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 52 – 62, 64 – 69, 70 – 77, 79 – 87, 106 – 108 and 110 – 120 rejected under 35 U.S.C. 103(a) as being unpatentable over Kirkpatrick (USPN 3,434,588).

Kirkpatrick discloses a formulation prone to skinning and a liquid formulation vapor held within the container that includes a container sealing means in the form of a resealable lid (Column 2, lines 52 – 57) having an internal surface (Column 2, lines 28 – 35 and Figures 1 and 2, #10 and 11). The anti-skinning layer is located on the entire internal surface, including the sealing means, of the container (Column 1, lines 53 – 55; Column 2, lines 6 – 8 and Figure 2, #12) and retains a layer of the liquid formulation (Column 2, lines 36 – 40) without excluding the formulation vapor within the ullage space of the container from contacting the layer of liquid formulation retained on the anti-skinning layer (Figure 2, #12 and 13). The formulation has a certain concentration depending on how it is made (Column 2, lines 28 – 35) and the anti-

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skinning layer substantially maintains the concentration of said certain concentration since it adheres the dried paint (Column 1, lines 53 – 55). The anti-skinning layer is textured (Column 2, lines 5 – 7) and has insulative properties due to the plastic material from which it is made (Column 3, lines 4 – 21), wherein the texture or anti-skinning layer has a thickness of 3.175 mm (Column 3, lines 41 – 43). Multiple different methods are used to form the anti-skinning layer including thermally bonding woven or webbed material to the surface of the resin material (Column 3, lines 61 – 64), integrally molding to an internal surface of the container by chemically treating the surface to form the texture (Column 4, lines 59 – 75) and adhering the material to the surface of the resin material (Column 53 – 55). The formulation that is prone to skinning is chosen from varnishes, lacquers and latex and water-soluble alkyd paints (Column 2, lines 28 – 35). The container is adapted to contain 10 ml to 50,000 liters of formulation since the container includes pails, buckets drums and other containers (Column 2, lines 47 – 52). However, Kirkpatrick fails to disclose the anti-skinning layer having a thickness of approximately 0.001 to 5 mm, being a gauze or foam lining, the second skinning layer being an integrally molded series of space apart concentric ribs integrally molded to a plastics container between the top of the container proximate the sealing means to at least the formulation level and the integrally molded series of ribs extending from the top of an internal surface of the container proximate to the sealing means substantially to a base of the container.

Kirkpatrick discloses the claimed invention except for anti-skinning layer being a gauze or foam lining. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the woven, unwoven or felt material of Kirkpatrick with the

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claimed gauze material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice and since gauze is a specific type of woven material. It would also be obvious to one of ordinary skill in the art that the woven material is an obvious replacement since gauze is a type of woven material. The woven, unwoven or felt material of Kirkpatrick performs an interchangeable function to the claimed materials since it is capable of absorbing both the formulation and formulation vapors. Therefore, one of ordinary skill in the art would readily determine that the foam performs an interchangeable function to the foam depending on the desired end results and the absence of unexpected results.

With regard to the second skinning layer being an integrally molded series of space apart concentric ribs integrally molded to a plastics container between the top of the container proximate the sealing means to at least the formulation level and the integrally molded series of ribs extending from the top of an internal surface of the container proximate to the sealing means substantially to a base of the container, it is well settled that a particular shape of a prior invention carries no patentable weight unless the applicant can demonstrate that the new shape provides significant unforeseen improvements to the invention. See *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947). Also, see *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). In this instant case, the application does not indicate any new, significant attributes of the invention due to its shape, which would have been unforeseen to one of ordinary skill in the art. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to

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change the shape of the polymer container in Kirkpatrick. One skilled in the art would have been motivated to do so in order to have a shape that appeals to the consumer.

With regard to the limitation of “substantially reduces the amount of skinning of the formulation” in claims 52, 65 and 106, Kirkpatrick discloses the removal of liquid paint that has dried by attachment to the inside surface of the container (Column 2, lines 37 – 40), and therefore would limit the amount of paint which would form a skin.

Response to Arguments

6. Applicant's arguments filed May 23, 2005 have been fully considered but they are not persuasive.

In response to Applicant's statement with regard to the Kirkpatrick reference with regard to the liquid formulation being retained by the anti-skinning layer is actually referring to dried paint, when the paint is first retained by the anti-skinning layer, it is in a liquid form (Column 2, lines 37 – 38), thereby meeting the claim limitations. The fact that the paint dries to form flakes or chips for the method of retaining is just how the final step of the anti-skinning layer operates.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571) 272-1496. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia L. Nordmeyer
Examiner
Art Unit 1772

pln
pln

[Signature]
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

7/8/05